

File 4

University of Calgary  
General Counsel correspondence

Response to the University of Calgary Enquiry

Joe Lougheed, Partner, FMC Calgary

February 16, 2012

Fraser Milner Casgrain LLP (FMC) – University of Calgary Provision of Services

The University of Calgary has been a long-standing client of Fraser Milner Casgrain LLP (FMC). Starting in about 2005, I provided government relations work for the University, in addition to our other legal services to the University. Our primary contacts at the University were Mr. Roman Cooney leading the University's external relations department during that time, as well as **5.17(1)** who worked with Mr. Cooney on the government relations file, and the University General Counsel Ms. Barry-Hollowell at that time. My services were billed to the University of Calgary's general counsel. My billing practices for government relations work included a combination of billing for specifically identified discrete services, as well as general services related to different legal counsel activities. The University of Calgary was billed for my government relations services largely on an annual basis.

Effective June 15, 2008, FMC and the University of Calgary entered into a formal retainer agreement for government relations and community relations advice. Our subsequent billings were carried out in accordance with that agreement. The monthly retainer fee was at the amount of \$5,000 – \$60,000 per annum. The agreement lasted for one year, after which it was mutually terminated given the changed focus of the University of Calgary with regard to its government relations and other priorities, following the departure of Mr. Cooney.

Premier's Dinner

As part of FMC's overall marketing initiatives, the firm purchased tables for the Premier's dinner in 2006, 2007, 2008, and possibly in 2005 and 2009. At these events, we invited a number of our clients, including representatives of the University of Calgary, to be our guests. Our clients view events, such as this, as being beneficial to their organizations. This practice was consistent with FMC's marketing activities at that time. The purchase of the tables was borne by FMC. No clients were charged for the cost of their tickets to these events.

Discussion of the 2008 Account

Following the new General Counsel joining the University of Calgary, the University requested clarification of FMC's March 2008 invoice. I was intending to explain that the March invoice was not related to the reimbursement of the cost of the tickets to the Premier's Dinner, but was related to my services for government relations work. In the context of the overall relationship with the University of Calgary, FMC wrote off its March 2008 invoice at the request of the University of Calgary's general counsel.

My poorly drafted email of August 13, 2008 would have created some confusion, in particular, the phrase "then simply charge for an equivalent amount of my time." As mentioned earlier, I had intended to explain that the March invoice was related to government relations, and the cost of the tickets to the Premier's Dinner was not charged to the University of Calgary.

## Addendum to Filz 4

Without the full knowledge of all the facts and the context, I recognize this situation might have given rise to questions. However, at no time was I billing for services not requested by, and provided to, the University of Calgary. I have always sought to conduct myself with honour and integrity and to serve my clients and my community as best I can. At no time did I or FMC act on behalf of the University of Calgary as an agent to facilitate political donations.

Charlene Anderson

From: Lougheed, Joseph [Joseph.Lougheed@FMC-Law.com]  
Sent: Wednesday, August 13, 2008 1:21 PM  
To: Charlene Anderson  
Cc: Anagnostakos, Leah; S.17 Roman Cooney  
Subject: March FMC Bill

Charlene, your office is questioning a bill issued on March 31 and \$4500 in my time re: U of C "Assist" S.17 re: Government Relations matters".

You know that in June I was retained by External Relations to provide some GR advice. I bill Roman for that directly. The above is NOT part of that.

The bill in question relates to the Premier's Dinner. As the U of C is precluded from buying the table directly, we buy the table for the U of C write off the disbursement and then simply charge for an equivalent amount of time. This is a practice which we have followed for a couple of years now. This is the first time this has been questioned by you.

If Legal Services does not want to pay this that is fine - I understand your budget is tight, but it is separate and apart from my normal retainer for GR matters. If S.17 and Roman wish to have this come out of their budget vs. you in yours I leave that to you as a group to decide. I will simply move the time (\$4500) over and add it to the next GR bill.

Let me know if you have any questions and / or how you would like me to proceed.

Hope all is well,

JOE

From: Loughéed, Joseph <Joseph.Loughheed@FMC-Law.com>  
 Sent: Monday, August 18, 2008 2:39 PM  
 To: Charlene Anderson  
 Subject: RE: March FMC Bill

I am also speaking to Roman at 3pm on this and other matters. Obviously my intention is NOT in any way to put the University in harms way. Can we chat? What is your direct line? Email makes this conversation difficult.

I think the issue is charging back the University; FMC regularly does buy two tables to this event. One question then, can we invite you as our guests at one table, as long as we do NOT in any way charge it back or expect payment for it? My reading (re-reading) of the Legislation would appear to indicate that is ok. You can attend as guests.

Anyway, lets actually speak. I am at my desk.

Joe

-----Original Message-----

From: Charlene Anderson [mailto:cande@ucalgary.ca]  
 Sent: Monday, August 18, 2008 2:28 PM  
 To: Loughéed, Joseph  
 Subject: Re: March FMC Bill

Joe, I will follow up with Roman and ~~5.17~~ privately regarding these emails but I am concerned that your email left the impression that my interpretation was 'splitting hairs'. Your initial email below was clear that you were buying a table on our behalf b/c we were prevented from doing so and that you would bill us an equivalent amt as 'fees' in exchange for this table. You were not billing us for your time. I have reviewed the Elections Finances and Contribution Disclosure Act which specifically prohibits the University from contributing funds to a party or candidate (set out below). This Act also prohibits another entity from making these contributions on our behalf. In addition, CRA also has prohibitions. So I stand by my very real concern that this practice is illegal and is unacceptable.

#### Prohibition

s. 16. No prohibited corporation, person normally resident outside Alberta or trade union or employee organization other than a trade union or employee organization as defined in this Act shall make any contributions to a registered party, registered constituency association or registered candidate.

(l) "prohibited corporation" means

(v) a public post-secondary institution under the /Post-secondary Learning Act/,

#### Contributions not belonging to contributor

34\*(1)\* Subject to section 26, no person, corporation, trade union or employee organization shall contribute to any registered party, registered constituency association or registered candidate funds not actually belonging to that person, corporation, trade union or employee

organization, or any funds that have been given or furnished to the person, corporation, trade union or employee organization by any persons or groups of persons or by a corporation, trade union or employee organization for the purpose of making a contribution of those funds to that registered party, registered constituency association or registered candidate.

Offences by corporations, etc.

49\*(1)\* A corporation, trade union, employee organization or prohibited corporation that contravenes this Act is guilty of an offence and liable to a fine of not more than \$10 000.

Lougheed, Joseph wrote:

>Thanks for your views on this Charlene. I do not think it is fair to  
>say services were and are not rendered; I am at the event every year and  
>at the functions the come before and after it. This time is beneficial  
>to the University's overall relationship with the Government and in the  
>introductions made.

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>In any event, I do not want to split hairs nor debate the issue, but I  
>respect your views. Roman and I shall deal with this.

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>Have a good weekend.

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>JOE

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>-----Original Message-----

>From: Charlene Anderson [mailto:cande@ucalgary.ca]

>Sent: Thursday, August 14, 2008 1:25 PM

>To: Lougheed, Joseph

>Cc: Anagnostakos, Leah; S. 17 Roman Cooney

>Subject: Re: March FMC Bill

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>correct that this is the first time this 'practice' has been questioned  
>by me. However, I questioned (and objected to) it, the moment I became  
>aware of it. I cannot pay this account nor can I condone this practice.

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>This practice, in my opinion, exposes the University to unnecessary  
>risks - legally, financially and reputationally. The University cannot  
>pay for services that were not rendered, nor should we circumvent the  
>rules that preclude us from buying a table. I will leave it up to you  
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 Charlene Anderson  
 General Counsel

University Legal Services

Tel: (403) 220-2557

Fax: (403) 210-9635

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From: Roman Cooney <rcooney@ucalgary.ca>  
Sent: Monday, August 18, 2008 3:30 PM  
To: Charlene Anderson; Joe Loughheed  
Cc: S. 17  
Subject: Re: March FMC Bill - privileged

Charlene -- I don't think Joe was intending to downplay your concerns. Part of the uncertainty around this is that Linda felt that, given the broader political work associated with these events, which is considerable, that the billing was appropriate. I accepted her advice. You clearly disagree, and you are the University's general counsel. I'll take your advice and we will, in future and including the event earlier this year, ensure the University does not directly or indirectly pay for these events. Thanks,  
Roman

Charlene Anderson wrote:

- > Roman and S. 17 I will follow up separately with Joe on this. As you
- > might imagine, I am concerned that Joe set this out in writing. I am
- > also concerned that he's implying that I am merely 'splitting hairs'
- > here. So for your information, I am providing you with excerpts from
- > the Elections Finances and Contribution Disclosure Act which
- > specifically prohibits the University from contributing funds to a
- > party or candidate. This Act also prohibits FMC from making these
- > contributions on our behalf.
- >
- > In addition, a registered charity is also prohibited from contributing
- > to a political party by CRA.
- >
- > Prohibition
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- > s. 16. No prohibited corporation, person normally resident outside
- > Alberta or trade union or employee organization other than a trade
- > union or employee organization as defined in this Act shall make any
- > contributions to a registered party, registered constituency
- > association or registered candidate.
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 > actually belonging to that person, corporation, trade union or  
 > employee organization, or any funds that have been given or furnished  
 > to the person, corporation, trade union or employee organization by  
 > any persons or groups of persons or by a corporation, trade union or  
 > employee organization for the purpose of making a contribution of  
 > those funds to that registered party, registered constituency  
 > association or registered candidate.

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>> In any event, I do not want to split hairs nor debate the issue, but  
 >> I respect your views. Roman and I shall deal with this.

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>> Have a good weekend.

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>> From: Charlene Anderson [mailto:cande@ucalgary.ca] Sent: Thursday,  
 >> August 14, 2008 1:25 PM

>> To: Lougheed, Joseph

>> Cc: Anagnostakos, Leah; 5.17 Roman Cooney

>> Subject: Re: March FMC Bill

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**Sent:** Monday, August 18, 2008 3:33 PM  
**To:** Charlene Anderson  
**Cc:** Roman Cooney  
**Subject:** Discussion with Roman

Charlene, I just discussed this with Roman. Linda and I were ok with this arrangement and the interpretation of the law (although we both agreed at the time it was subject to some debate) and on that basis we went ahead. You are not which I fully respect. On the basis of your concerns, we will cease this practice, effectively immediately. Roman may discuss with you directly.

I would still like to have a brief conversation with you when you can chat. We will be writing off the March account.

Joe

Charlene Anderson

4.10.

not responsive

----- Original Message -----

Subject: Re: March FMC Bill

Date: Mon, 18 Aug 2008 14:27:32 -0600

From: Charlene Anderson <cande@ucalgary.ca>

Organization: UofC

To: Lougheed, Joseph <Joseph.Lougheed@FMC-Law.com>

References:

<6DSF09482106DC43800FF44C1142EEDF0695118A@WESTEXCH01.calgary.lawfirm>

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